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Jack Scott McInteer  
Randall K. Rathbun  
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Robert J. Vincze‡

‡Licensed in:  
KS, CO, MO, NY, OK



Spencer L. Depew  
(1933-2005)  
Nicholas S. Daily  
(1949-2006)

August 8, 2016

*Registered Mail—Return Receipt*

The Honorable Gina McCarthy,  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

The Honorable Mark J. Hague,  
Administrator  
U.S.E.P.A Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

The Honorable Loretta E. Lynch,  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

The Honorable Susan Mosier, Secretary  
Kansas Dept. of Health & Environment  
Curtis State Office Building  
1000 SW Jackson  
Topeka, KS 66612

**NOTICE OF INTENT TO SUE UNDER RCRA AND CWA  
AND CLAIM UNDER OPA**

Nathan Lange, surface owner of the land described on Exhibit A, attached hereto ("Land"), by and through his undersigned counsel, respectfully provides this notice of his intent to sue D&Z Exploration, Inc., an Illinois corporation; Martin Oil Properties, Inc., an Oklahoma corporation; Martin Oil Properties, L.C., a Kansas limited liability company; and Tailwater, Inc., an Oklahoma corporation; the past and current operators of the oil and gas facilities on the lease(s) covering the Land (collectively, the "Operators") under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 *et seq.*, on or after the 60<sup>th</sup> or 90<sup>th</sup> day from the date of this notice pursuant to 42 U.S.C. §§6972(b)(1) or (b)(2)(A) as applicable. The suit will allege that the past and present handling, storage, treatment, transportation and disposal of solid and hazardous waste by these Operators on the Land and beyond the boundaries of the Land has and will (1) violate a standard, regulation, condition, requirement, prohibition or permit pursuant to RCRA, and (2) present an imminent and substantial endangerment to health and the environment. 42 U.S.C. §6972(a)(1)(A) and (B). The practices and actions of these Operators constitute open dumping under RCRA. 42 U.S.C. §6945(a); *see* 42 U.S.C. §6803(5) and (27) (definitions of "hazardous waste" and "solid waste").

DGR&M



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Further, Nathan Lange, by and through his undersigned counsel, hereby provides notice of his intent to sue the Operators on or after the 60<sup>th</sup> day from the date of this notice, under the Clean Water Act ("CWA"), 33 U.S.C. §§1365(a)(1)(A) and 1311(a). The suit will allege that these Operators' past and continuing practices and actions constitute unlawful discharges of pollutants from a point source into waters of the United States without the authorization of, and not in accordance with, a National Pollutant Discharge Elimination System ("NPDES") permit, a storm water permit, an adequate storm water pollution prevention plan ("SWPP Plan"), and upon information and belief, an adequate Spill Prevention, Control, and Countermeasures Plan ("SPCC Plan"). *See* 40 C.F.R. Part 122 (NPDES); 40 C.F.R. §122.26(b)(14)(iii) (SWPP Plan); 40 C.F.R. Part 112 (SPCC Plan).

In addition, pursuant to 33 U.S.C. §2713, Nathan Lange, by and through his undersigned counsel, hereby makes a claim against the Operators, and each of them, for damages and for the removal of the discharges of oil (as defined at 33 U.S.C. §2701(23)) on the Land and into or upon waters of the United States under the Oil Pollution Act of 1990, 33 U.S.C. §2717 ("OPA").

### **RCRA**

During the years 2015 and 2016, the Operators have disposed and continue to dispose of solid and hazardous waste on the Land, including, but not limited to, waste oil, produced water, salt water, and waste drilling fluids and chemicals. *See* Appendix hereto. There is evidence that such solid and hazardous wastes have contaminated the soil and groundwater on the Land, and beyond the boundaries of the Land, and have entered into waters of the United States, constituting a present, imminent and substantial endangerment to health and the environment.

### **CWA**

Waste fluids, including, but not limited to, waste oil, produced water, salt water, and waste drilling fluids and chemicals, have been found on many occasions within the berms surrounding the tank batteries on the Land, and such fluids have ran out over the top of the berms and through pipes built into the berms onto the Land and have commingled with storm water. *See* Appendix hereto. Fluids from the east tank battery on the Land have flowed and continue to flow into a nearby stream and have entered into or upon waters of the United States and waters of the state of Kansas. 33 C.F.R. §328.3; K.S.A. §65-161(a).





### OPA

The Operators operated facilities used in oil well drilling operations, oil production, oil storage, oil gathering, oil processing and oil transfer on the Land under an oil and gas lease or leases, including that certain oil and gas lease between Chris Hastert and Edith Hastert, husband and wife, to the Hastert Oil Company, duly recorded on November 13, 1985, in Oil and Gas Book 14 on Page 48 of the records in the office of the Register of Deeds of Anderson County, Kansas ("Facility"). On numerous occasions in each of the years 2015 and 2016, as set forth in the Appendix, attached hereto, oil, oil mixed with waste, produced fluids and salt water containing oil from operations of the Facility were discharged on the Land and into or upon the waters of the United States, and such discharges are continuing.

In addition, unplugged wells on the Land have discharged oil on the Land and into or upon waters of the United States. The existence of unplugged wells "poses the substantial threat of the discharge of oil." 33 U.S.C. §2702(a); and *see* K.S.A. §55-179(d) (unplugged wells are "deemed likely to cause pollution of any usable water strata or supply.")

As a result of the discharges of oil from the Facility on the Land and into or upon the waters of the United States, Nathan Lange has sustained substantial damages and will continue to sustain damages, including:

- a. damages to the Land, his livestock, pasture and crops;
- b. loss of income, profits and earnings, including the loss of his ability to lease the Land for grazing due to the death of livestock apparently from ingesting oily water on the Land;
- c. remediation and removal costs, including but not limited to, erosion controls and soil amendments, and costs to plug abandoned oil wells; and
- d. annoyance, inconvenience and loss of the use, enjoyment and possession of the Land.

Wherefore, Nathan Lange makes demand from the Operators, and each of them, for such damages in the amount of Three Hundred and Twenty-Five Thousand Dollars (\$325,000). If this claim is not settled by payment within 90 days after the date upon which this claim is presented, Nathan Lange may elect to commence an action in court against the Operators or any of them.

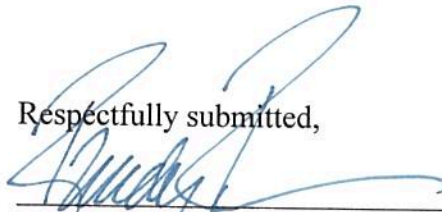


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**IDENTIFICATION OF PERSON GIVING NOTICE**

Nathan Lange  
1226 E. 85<sup>th</sup> Street North  
Valley Center, KS 67147  
Home phone: 316-670-3562

Respectfully submitted,



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Randall K. Rathbun, KS #09765  
Charles C. Steincamp, KS #16086  
Robert J. Vincze, KS #14101  
Depew Gillen Rathbun & McInteer LC  
8301 E. 21<sup>st</sup> Street, Suite 450  
Wichita, KS 67206-2936  
Telephone: (316) 262-4000

**ATTORNEYS FOR NATHAN LANGE**





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### CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of August, 2016, I caused true and correct copies of the foregoing Notice and Claim letter to be served by registered U.S. mail, return receipt requested, upon the Honorable public servants set forth in the salutation and upon the Operators as set forth below.

D & Z Exploration, Inc.  
Attn: Mr. David Belden, President  
901 N. Elm Street, PO Box 159  
St. Elmo, IL 62458

Martin Oil Properties, Inc.  
Attn: President  
6421 Avondale Drive, Suite 212  
Oklahoma City, OK 73116

D & Z Exploration, Inc.  
c/o Deke Belden, Reg. Agent  
729 W. Jefferson Street  
Gardner, KS 66030

Martin Oil Properties, Inc.  
c/o Robert Martin, OK Reg. Agent  
4001 N.W. 122<sup>nd</sup>, Ste. 928  
Oklahoma City, OK 73120

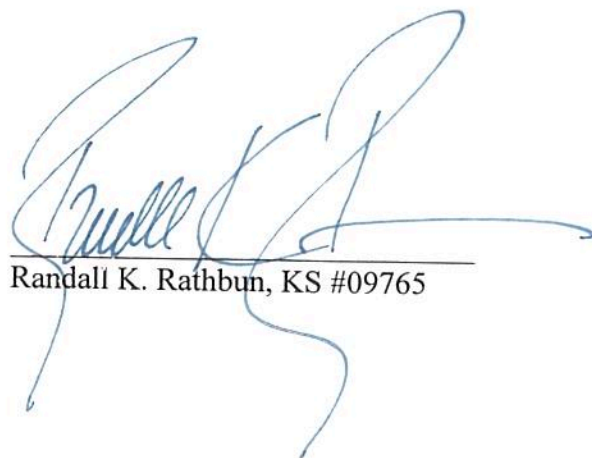
Martin Oil Properties, L.C.  
Attn: President  
5131 Classen Boulevard  
Oklahoma City, OK 73118

Martin Oil Properties, L.C.  
c/o John C. Chappell, KS Reg. Agent  
9292 Massachusetts Street  
Lawrence, KS 66044

Tailwater, Inc.  
Attn: President  
6421 Avondale Drive, Suite 212  
Oklahoma City, OK 73116

Tailwater, Inc.  
c/o John C. Chappell, KS Reg. Agent  
929 Massachusetts Street  
Lawrence, KS 66044

Tailwater, Inc.  
c/o Stacey B. Martin, OK Reg. Agent  
1421 Farmington  
Norman, OK 73072



Randall K. Rathbun, KS #09765



## EXHIBIT A

### DESCRIPTION OF THE PROPERTY

Those certain tracts of land containing 320.26 acres, more or less, situated in Anderson County, Kansas, being more particularly described as:

**Parcel ID Number: 0020962400000001000 and 0020961300000004000**

The Southeast Quarter (SE/4) of Section Thirteen (13) and the North Half (N/2) of the Northeast Quarter (NE/4) of Section Twenty-four (24) and the East Half (E/2) of Southwest Quarter (SW/4) of Section Thirteen (13), all in Township Twenty (20) South, Range Twenty (20) East of the Sixth Principal Meridian, LESS the following: Beginning at the Southwest corner of the North Half (N/2) of the Northeast Quarter (NE/4) of Section Twenty-four (24), Township Twenty (20) South, Range Twenty (20) East of the Sixth Principal Meridian, in Anderson County, Kansas, thence South 89 degrees 43 minutes 29 seconds East 1311.88 feet along the South line of the North Half (N/2) of said quarter section to a point on the centerline of county road, as now exists; thence North 49 degrees 55 minutes 50 seconds West 443.16 feet along the centerline of said county road; thence continuing Northwesterly along a curve to the left having a radius of 243.95 feet, with a chord that bears North 65 degrees 44 minutes 10 seconds West 132.89 feet, an arc length of 134.59 feet along the centerline of said county road; thence leaving said county road North 00 degrees 19 minutes 01 seconds West 89.65 feet; thence South 85 degrees 53 minutes 40 seconds West 542.33 feet; thence North 40 degrees 06 minutes 26 seconds West 228.43 feet; thence North 89 degrees 43 minutes 29 seconds West 164.33 feet to a point on the West line of said quarter section; thence South 00 degrees 08 minutes 12 seconds East 599.90 feet along the West line of said quarter section to the point of beginning, expected tract contains 10.74 acres more or less, including road right of way as recorded, Anderson County, Kansas, containing 309.26 acres more or less.

### AND

A tract of land commencing at the Southeast corner of the West Half (W/2) of the Southwest Quarter (SW/4) of Section Thirteen (13), Township Twenty (20) South, Range Twenty (20) East of the Sixth Principal Meridian, thence West 360 feet, thence North 80 rods, thence East 360 feet, thence South to the place of beginning, containing approximately Eleven (11) acres.

**The above-described property being the same property described in that certain Quit Claim Deed dated November 13, 2014 recorded in Book 175, Page 212 in the Office of the Recorder of Anderson County, Kansas on November 13, 2014; Warranty Deed, dated August 11, 2014, recorded in Book 175, Page 117, in the Office of the Recorder of Anderson County, Kansas on August 15, 2014; Trustee Deed, dated August 11, 2014, recorded in Book 175, Page 116, in the Office of the Recorder of Anderson County, Kansas on August 15, 2014 and Warranty Deed, dated August 11, 2014, recorded in Book 175, Page 115, in the Office of the Recorder of Anderson County, Kansas on August 15, 2014.**



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## **APPENDIX**

### **INCIDENTS, RELEASES, DISCHARGES**

On or about 2/26/15:

Leakage around abandoned wells

On or about 3/16/15:

Leaking tanks, leaking wells

On or about 3/18/15:

“On the east tank battery, the fluid has flowed northeast creating a channel that runs into a nearby stream. PVC pipe built into berms have been used for drainage in past.”

On or about 3/20/15:

Recent and past releases of oil and brine have impacted waterway at Latitude 38.305351, Longitude -95.145200.

On or about 3/24/15:

Multiple problems with leaking tanks, leaking berms surrounding tanks, leaking wells.

On or about 3/26/15:

Oil and produced fluids are/have escaped the emergency pits of both the East and West Hastert Tank Batteries.

Produced fluids have been allowed to escape from the NE side of the East Hastert tank battery. Escaped fluids have coursed into a natural drainage below a pond and are commingling with surface water for approximately 950 ft. down a man-made terrace channel, and into a stream, a water of the United States and Kansas.

Produced fluids are also escaping the West Hastert tank battery to the northwest into a drainage and have traveled approx. 2,800 ft. Spills appear to be ongoing and are unreported.

UIC system is not handling the volume of produced fluids and is causing the brine tanks to overflow. The injection pump within the West Hastert is also leaking.





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A well located at Latitude 38.30565, Longitude -95.14725 (~1188 fsl and 2395 fel), GPS pt. 077, is also leaking. Approximately 10 bbls of fluid has accumulated within a pit surrounding the wellhead and fluid has escaped to the north of the pit.

On or about 3/30/15:

Pit south of tank batteries filled in. The PVC drains on the berm have been cut off and capped. PVC pipe should be removed. Produced fluid containing oil in east tank battery. Latitude 38.304957, Longitude -95.145546

On or about 3/31/15:

Produced water may have flowed into the lower pond just south of the east tank battery.

Lease produces more brine than can be handled if there is any type of failure in the injection pump.

On or about 4/23/15:

Oil seeping from locations where old pits were closed. Oil in waterway northwest of the tank batteries.

On or about 5/7/15:

Open pits next to two injection wells.

On or about 6/11/15:

Oil and water in the berms of each tank battery.

On or about 6/11/15:

Abandoned well flowing oil from around the backside of production casing at Latitude 38.305667, Longitude -95.147194.

On or about 6/11/15:

Water has collected within berms again.

Oil and brine mixed with rainwater within berm at east tank battery.

On or about 6/12/15:

West tank battery: Three of the brine tanks have fluid at or near top and one appears to have overflowed recently. Water is building up within the berm and has breached the berm and is flowing onto the ground on the west side of the tank battery.



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Water/oil mix is flowing downhill.

Oil on wet ground below berm.

On or about 6/15/15:

5 wells with standing oil around the well casing were found.

On or about 6/18/15:

No SPCC plans for tank batteries.

Abandoned well flowing oil from around the backside of producing casing at Latitude 38.305667, Longitude -95.147194

Tank release filed in the National Response Center under incident #1119479.

On or about 6/22/15 and 6/29/15:

There is still evidence that releases have occurred from both the West Hastert Emergency Pit, the East Hastert Emergency Pit and the flowing well pit.

On or about 6/29/15:

Crude oil within the vegetation along terrace channel.

On or about 6/30/15:

Oil and water in the berms surrounding the tank batteries.

On or about 7/1/15:

Produced fluids escaping from containment structures

Well leaking oil up annulus at Latitude 38.30565389, Longitude -95.14725407.

Well leaking oil through the annulus of the production string and surface casing at Latitude 38.30565389, Longitude -95.14725407.

Soil saturated with crude oil and salt water observed at East Hastert tank battery.

Near northwest corner of emergency pit around West Hastert Tank Battery - precipitation is pushing crude oil from saturated soils.

Sheet water observed flowing into East Hastert Tank Battery.



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On or about 7/10/15:

Oil on ground from backside of production pipe at GPS #008.

On or about 7/15/15:

Crude saturated cattails and soil removed by Operator from east side of emergency pit of the East Hastert Tank Battery.

On or about 7/15/15:

Oil flowing well to surface at Latitude 38.30565389, Longitude -95.14725407.

On or about 8/6/15:

Recent spills.

On or about 10/16/15:

Dead cow next to pond on east side of the Hastert Lease - cow may have died as a result of ingesting petroleum products at Latitude 38.305985, Longitude -95.141720.

On or about 10/19/15:

Abandoned well leaking next to a pond dam. Oil leak on the pump jack south of the east tank battery. Several leaks on the lease may be killing cattle.

On or about 10/20/15:

At least two dead cattle (grazing lease).

Loss of income.

Well flowing oil on surface at Latitude 38.307652, Longitude -95.144032.

Unauthorized pit next to abandoned well at Latitude 38.307092, Longitude -95.141999.

Unauthorized pit next to plugged well at Latitude 38.306570, Longitude -95.141542.

Spillage of oil and brine on ground next to well at Latitude 38.304512, Longitude -95.140146.

Oil spillage next to well at Latitude 38.304390, Longitude -95.139308 and at Latitude 38.304022, Longitude -95.143252.





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On or about 10/23/15:

Oil spill when electricity down (HAS023).

On or about 10/26/15:

Flowing well at Latitude 38.307652, Longitude -95.144032 and at Latitude 38.305667, Longitude -95.147194.

On or about 10/26/15:

Recent releases of oil and brine have impacted waterway near East Tank Battery at Latitude 38.305453, Longitude -95.145185.

Spillage of oil and brine on ground next to well at Latitude 38.309424, Longitude -95.145952.

On or about 0/26/15:

Electricity went off at East Hastert, shut down lease, caused well to flow on surface.

On or about 3/1/16:

Brine spills over weekend at Hastert Lease.

On or about 3/2/16:

Produced fluids including oil escaped from Injection Well #6-W at Latitude 38.30772397, Longitude -95.14345966, Producing Well #17-E at Latitude 38.30942483, Longitude -95.14595236, and Producing Well #22-E at Latitude 38.30871329, Longitude -95.14631781.

Summer 2016:

Incidents, discharges and releases of oil, produced fluids and salt water continue.

